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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Human rights and unilateral coercive measures

Report of the Secretary-General

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Introduction

1. The Commission on Human Rights, recalling General Assembly resolution 2625 (XXV) of 24 October 1970 containing the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, reaffirming General Assembly resolution 3281 (XXIX) of 12 December 1974 containing the Charter of Economic Rights and Duties of States, in particular its article 32 which declares that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights, as well as the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993, in particular, part I, paragraph 31 relating to the kind of measures referred to in the present resolution, adopted resolution 1995/45 entitled "Human rights and coercive measures", the relevant paragraphs of which are quoted below:

> "1. Calls upon the international community to reject the use by some countries of unilateral coercive measures which are in clear contradiction with international law against developing countries with the purpose of exerting, directly or indirectly, coercion on the sovereign decisions of the countries subject to those measures;
>
> "2. Reaffirms that the implementation of such measures or their intensification as a means to exercise political, economic or social pressure against developing countries prevents the full realization of all human rights by the people subject to those measures, particularly children, women and elderly people;
>
> "3. Requests all States to refrain from adopting any unilateral coercive measures which are in clear contradiction with international law and the Charter of the United Nations and creates obstacles to trade relations among States and impedes the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services;
>
> "4. Rejects the fact that some countries using their predominant position in the world economy continue to intensify the adoption of unilateral coercive measures against developing countries which are in clear contradiction with international law, such as trade restrictions, blockades, embargoes, freezing of assets, with the purpose of preventing those countries from exercising their right fully to determine their political, economic and social system;
>
> "5. Reaffirms the right of peoples to self-determination and to dispose of their natural wealth and resources without foreign pressure, and that in no case may a people be deprived of its basic means of subsistence;
>
> "6. Also reaffirms that essential goods, in particular food and medicines, should not be used as a tool for political pressure;

"7. Stresses that the Working Group on the Right to Development identified the adoption of unilateral coercive measures as one of the obstacles to the implementation of the Declaration on the Right to Development;

"8. Considers that the adoption or intensification of unilateral coercive measures constitutes a violation of the human rights of peoples;

"9. Requests the Secretary-General to submit, in consultation with Governments and specialized agencies, as well as with intergovernmental and non-governmental organizations, a report to the Commission on Human Rights at its fifty-second session on the coercive measures unilaterally implemented against developing countries hindering the full realization of all rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of peoples to a minimum standard of living and development."

2. In accordance with paragraph 9 of the resolution, the Secretary-General, in a note verbale and letter dated 31 August 1995, invited Governments, specialized agencies, as well as intergovernmental and non-governmental organizations to transmit information relevant on the subject-matter.

3. As at 30 November 1995, replies were received from the following Governments, United Nations bodies and specialized agencies, intergovernmental organizations and non-governmental organizations:

(a) Governments: Angola, Argentina, Burkina Faso, Cuba, Uruguay;

(b) United Nations bodies and specialized agencies: United Nations Conference on Trade and Development (UNCTAD), United Nations Economic Commission for Africa (ECA), United Nations Economic Commission for Latin America and the Caribbean (ECLAC), United Nations Environment Programme (UNEP), United Nations University (UNU), World Health Organization (WHO). Of these organizations, UNCTAD, ECA, ECLAC, UNU and WHO replied that they had no relevant information to submit. UNCTAD suggested that the Department for Economic and Social Information and Policy Analysis, which is preparing a report on the issue of coercive measures for consideration by the General Assembly, be contacted. UNEP replied that since this important issue was outside its mandate, it was therefore not in a position to provide any meaningful information. Nevertheless, it recognized that such measures could hinder the full realization of rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of peoples to a minimum standard of living and development;

(c) Intergovernmental organizations: League of Arab States, Organization of American States (OAS), Organization for Economic Co-operation and Development (OECD). Of these organizations, OECD replied that it had no relevant information to submit. One organization sent information that was not directly relevant to the subject-matter and is not, therefore, reproduced in this report;

(d) Non-governmental organizations: American Association of Jurists (AAJ) and General Arab Women Federation.

4. The present report contains the replies received in compliance with the request contained in resolution 1995/45. Any additional replies will be compiled and submitted as addenda to this report.

I. REPLIES RECEIVED FROM GOVERNMENTS

Angola

[23 October 1995]
[Original: French]

The Government of Angola fully supports the resolution, especially paragraphs 1, 4, 5 and 6, and would like to see it circulated at both the international and national levels. The Government of Angola affirms its determination to support the noble ideals underlying resolution 1995/45.

Argentina

[16 November 1995]
[Original: Spanish]

The Government of the Argentine Republic does not apply unilateral coercive measures or exercise pressure in its economic relations with other States, except in the case of binding measures deriving from the decisions adopted by the Security Council.

Burkina Faso

[16 October 1995]
[Original: French]

The Minister for Foreign Affairs wishes to reassure the Secretary-General of his country's scrupulous compliance with this resolution. Accordingly, Burkina Faso fully supports the provisions of resolution 1995/45, which it is committed to implementing, in particular the recommendations contained in paragraphs 1, 3 and 4.

Cuba

[18 October 1995]
[Original: Spanish]

1. In recent years it has become increasingly obvious that, despite the end of the cold war and the settlement of some conflicts by means of constructive dialogue, some developed countries are continuing to use their dominant position in the world economy to apply unilateral coercive economic measures against some developing countries for the sole purpose of attempting to undermine the political, economic and social system that these countries have chosen and to impose their wishes by force against the sovereign will of those States.

2. Unilateral coercive economic measures are in blatant contradiction with the purposes and principles of the Charter of the United Nations and with the general principles and standards that have been established in the provisions of the International Development Strategy, in the resolutions of the United Nations Conference on Trade and Development and in the World Trade Organization, together with the relevant resolutions and decisions of the General Assembly of the United Nations.

3. There is no doubting that, as applied in its fullest and most odious form, a unilateral economic, trade and financial blockade involves a series of coercive economic measures against the countries affected, including in particular:

(a) Closing the national market of the country imposing the measures to the products of the country affected and attempting to prevent their access to the international market;

(b) Cancelling most-favoured-nation treatment;

(c) Trying to prevent these countries from acquiring fuel and its derivatives on the international market;

(d) Hindering or restricting commercial, monetary and financial transactions with third countries;

(e) Obstructing their acquisition of essential goods, such as food and medicine;

(f) Trying to prevent such countries from gaining access to appropriate technology, including health care technology;

(g) Trying to hinder or restrict all investment activities in the country affected, especially those directed towards raising its productive potential or the construction or operation of infrastructures;

(h) Prohibiting or obstructing the maritime trade of these countries, by hindering the access to their ports of ships that may be chartered for that purpose;

(i) Hindering the acquisition of durable goods, equipment, chemical products, fertilizers, spare parts and raw materials to be used in industry and agriculture;

(j) Developing principles of extra-territoriality and exercising strong pressures to induce other countries to apply coercive economic measures against the country affected;

(k) Obstructing or restricting in those countries the principles and provisions regulating intellectual property, in particular the registration of property and patent rights over important scientific discoveries, and hindering the marketing of the new products manufactured;

(l) Preventing the free movement of the nationals of those countries, by applying political and discriminatory criteria in the granting of visas or residence permits;

(m) Applying a series of measures designed to obstruct economic, social and cultural development in general.

4. A prime example of the application of such measures against a developing country is provided by the criminal economic blockade imposed by the United States of America against Cuba for over 35 years now. In their desire to obstruct, curb and hinder the economic and social development of the people of Cuba, the various United States Administrations have applied a series of coercive economic measures for political purposes.

5. The establishment of the blockade by the United States has meant, for Cuba, the loss of preferential prices for its sugar exports, a shortage of finance, a substantial increase in transport costs caused by the relocation of its trade, the immobilization of substantial resources, the higher prices that it has been forced to pay for the goods bought, the immobilization of plant and equipment because of a lack of spare parts, the paralysis of various productive activities and services because of a lack of raw materials, supplies and parts, and a reduction in tourism and consequent loss of income.

6. From the social point of view, these measures have had harmful consequences on the maintenance of the standard of living and the enjoyment of the most basic human rights of the Cuban people, resulting in a marked deterioration in levels of health, hygiene and nutrition and in the maintenance of adequate standards in sanitation, education and housing, to mention only a few examples.

7. It has been calculated that in 1994 alone these measures cost the Cuban economy some $1,000 million, which represents about 50 per cent of the country's total imports in that year.

8. It is regrettable that, despite the resolutions approved in recent years by both the General Assembly and the Commission on Human Rights on the application of coercive economic measures against developing countries, the United States Government has not only not desisted from applying measures of the kind mentioned against Cuba, but has continued to orchestrate and expand the scope of such measures, ignoring the growing and overwhelming demands of the international community for the ending of practices of this kind that violate the most basic norms of international law and the purposes and principles of the Charter of the United Nations, which are recognized by all Member States.

9. Similarly, the United States Government has violated the spirit of the family reunification of Cubans, has restricted the right of Cubans resident in that country to travel freely to their country of origin and has prevented such persons from supplying humanitarian assistance to their family members in Cuba.

10. More recently, it has become patently obvious that there is a tendency in the more irresponsible circles of the United States Administration to attempt to pass a whole series of proposals into law with the clear intention of crushing the Cuban people by force, by unilaterally subjecting it to the designs of the policy which that Government believes that the Cuban people should follow, and, moreover, to try to impose particular patterns of behaviour on many other sovereign nations.

11. The Government of the Republic of Cuba views with increasing concern and opposition the continuing application of unilateral economic measures against the developing countries despite the resolutions approved by the General Assembly and the Commission on Human Rights, which call for the elimination of such measures, and, consequently, hopes that the United Nations will act to fulfil its proper role in this field.

Uruguay

[22 September 1995]
[Original: Spanish]

Uruguay has neither applied unilateral coercive measures nor has been the object of such measures since the re-establishment of democracy.

II. REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

League of Arab States

[9 October 1995]
[Original: Arabic]

1. The Commission on Human Rights resolution entitled "Human rights and unilateral coercive measures" is unquestionably one of the most important resolutions adopted by that Commission, since its subject is a matter that closely concerns the developing countries of which we form part. The resolution contains numerous paragraphs that call upon the international community to reject the exploitation by some countries of their political, economic and military power to impose unilateral coercive measures which are in contradiction with international law and the Charter of the United Nations and create obstacles to trade relations among States, thereby impeding the attainment of a socio-economic level that would enable those States to achieve an appropriate standard of living and ensure that every individual enjoyed health care, suitable housing and basic services, to which all peoples are entitled under the terms of international covenants and conventions.

2. The Secretary-General of the League of Arab States has emphasized, on more than one occasion, the need to respect the rules of international law and the Charter of the United Nations by refraining from the imposition of any unilateral coercive measures against developing countries. In fact, such measures should be taken through the mechanisms created by the international community for the purpose of establishing international peace and security. Instead of adopting a policy of double standards, all States should be treated on an equal footing in accordance with uniform rules. We wish to reaffirm the need for all States to respect international law, covenants and treaties, to refrain from exploiting their strong position by imposing unilateral

coercive measures, to respect the rights of other States and to abstain from interfering in their internal affairs with a view to ensuring that social concord and peace prevail in all parts of the world, leaving no scope for violations of human rights.

III. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

American Association of Jurists

[6 October 1995]
[Original: Spanish]

I. International practice in the light of international law

1. In international practice a series of unilateral or multilateral measures of a basically economic character have developed consisting of making aid, loans or trading relations with a State subject to the condition that that State respects human rights in the territory under its jurisdiction. The most extreme measure of economic coercion in current use is the embargo.

2. This international practice is not based on any international instrument. It is in fact proscribed in some of them; for instance, in Article 2, paragraph 4, of the Charter of the United Nations, which prohibits the threat or use of force, making no distinction between armed force and force of other kinds, and in several General Assembly resolutions condemning the use of economic coercion. In addition, this practice is contrary to the aims and principles of the Charter as set out in Articles 1 (para. 3) and 55 and to various General Assembly declarations and resolutions promoting friendly relations and international economic cooperation. It is also contrary to the General Agreement on Tariffs and Trade, and in particular article 1, concerning general most-favoured-nation treatment, and paragraph 1 of article 11, both of which have been in force since the Marrakesh Agreement, which established the World Trade Organization.

3. Some specialists in international affairs argue that the prohibition in paragraph 4 of Article 2 of the Charter refers only to armed force - in other words, that that article would not prohibit States Members of the Organization from using forms of force other than armed force such as pressures, embargoes or economic blockades. Some of them, applying this interpretation to the specific field of human rights, consider that individual States can adopt measures of this kind against another State in which serious violations of human rights are taking place and that in so doing they are acting as "policemen" faced with a violation of an erga omnes obligation - a category into which respect for fundamental human rights falls.

4. We do not share this interpretation of paragraph 4 of Article 2 for a number of reasons, and consequently we reject the idea that coercive measures of an economic nature taken by a State or a group of States against another State which is violating, or is presumed to be violating, human rights can be legitimate.

5. Paragraph 4 of Article 2 uses the word "force", making no distinction between armed force and other forms of force. Where the Charter seeks to refer specifically to armed force, it does so expressly (Arts. 41 and 46). Consequently, the dogmatic principle of interpretation ubi lex non distinguit, nec nos distinguere debemus (where the law makes no distinction, we must make none) does not authorize the exclusion of force other than armed force from the scope of the prohibition in paragraph 4.

6. At the San Francisco Conference, where the Charter of the United Nations was adopted, several countries of South America proposed that specific mention of the prohibition of economic and political coercion be made in paragraph 4. The champions of the restrictive interpretation quote the rejection of the South American proposal in support of their thesis, namely that the prohibition refers only to armed force; but it can equally be argued that the intent of those who approved the Charter was to make no distinction between armed force and force of other kinds and for that reason did not accept the South American proposal, but equally did not insert the adjective "armed" before the word "force".

7. In any case, at this level of the gradual development of international law, it would seem, as was stated in 1992 in the discussions of the International Law Commission of State responsibility, "unwise and unnecessary to attempt to reopen the question of the meaning of the term 'force' [in paragraph 4 of Article 2 of the Charter] or to speculate on the reasons why the Latin American proposal on that point had been rejected at the San Francisco Conference". 1/

8. What is of primary interest is the current state of international law as regards standard-setting, case-law and doctrine on the subject of the use of economic coercion in international relations.

A. International standards

9. The Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 26 October 1970, in particular the ninth paragraph of the preamble and the third substantive principle, and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (resolution 42/22 of 18 November 1987) (in particular various paragraphs in the preamble and paras. 7, 8 and 17), both of which were adopted by consensus, enunciate a prohibition on use between States of coercive measures of an economic, political or other character.

10. In 1989 the General Assembly, by 118 votes to none with a few abstentions, adopted resolution 44/215, in which it condemned the economic measures used to exercise political and economic pressure on developing countries. In 1991 the General Assembly approved by consensus resolution 46/43 concerning protection and security of small States, in which it recognized the vulnerability of small States to external threats and acts of interference in their internal affairs and stressed the vital

importance for all States of the unconditional respect of the principles of the Charter of the United Nations, including the principles of sovereign equality, territorial integrity, non-interference in internal affairs and the peaceful settlement of disputes.

11. There are other texts which, although they do not have the standard-setting nature of the resolutions mentioned above, illustrate the general attitude of the General Assembly on the subject. These are resolutions 44/217 of 1989, deploring the continuation of the embargo against Nicaragua contrary to earlier General Assembly resolutions and to the Judgment of the International Court of Justice of 27 June 1986 and calling for its immediate revocation (adopted by 82 votes to 2 with 47 abstentions), and resolutions 47/19 of 1992, 48/16 of 1993 and 49/9 of 1994 (the last-mentioned was approved by 101 votes to 2 with 48 abstentions) calling for the ending of the embargo against Cuba.

12. The Vienna Declaration and Programme of Action (25 June 1993) also forms part of the body of international standards (jus cogens); the first part of paragraph 31 of section I of that instrument reads: "The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States ...".

13. At the regional level, article 19 of the Charter of the Organization of American States reads as follows: "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind" while article 18 prohibits intervention - by armed force or in any other manner - by a State or a group of States in the internal or external affairs of any other State.

B. International case-law

14. In the "Corfu case" the International Court of Justice, referring to actions by the British Navy, which carried out minesweeping operations in Albanian territorial waters without the consent of the authorities of that country, declared that "the Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself". 2/

15. In the Nicaragua v. United States case (military and paramilitary activities in Nicaragua) the International Court of Justice stated that some of the provisions of General Assembly resolution 2625 (XXV) of 1970, and in particular the principles of refraining from the use of force and of non-intervention, form part of customary law (para. 267). In reply to the argument of the United States Government that Nicaragua was violating human rights, the court stated: "... where human rights are protected by international conventions, that protection takes the form of such arrangements

for monitoring or ensuring respect for human rights as are provided for in the conventions themselves". It added "... while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect ..." (paras. 267 and 268). 3/

C. International doctrine

16. The draft articles on State responsibility, which are under consideration by the United Nations International Law Commission, and the discussions on the draft which are taking place within the Commission, may be considered as international doctrine.

17. A number of fundamental ideas relating to the subject under consideration here emerged from the discussions in the International Law Commission. These were: (a) under international law as it stands at present the prohibition on the unilateral use of force includes the prohibition of economic coercion; (b) violations of fundamental human rights are international crimes affecting the entire international community; (c) the proof of such violations and, where appropriate, their sanctioning should not be decided on unilaterally, but should be undertaken by the competent bodies of the international community. 4/

18. This de facto practice - and in particular the use of coercive measures (including economic coercive measures), either ordered by the Security Council or decided on by a State or a group of States, as a means of enforcing respect for human rights - raises a certain number of questions or queries which should lead to a proposal for an international legal framework to cover measures of this kind in order to prevent their application in a subjective, abusive, arbitrary or partial fashion in the light of the particular interests of the great Powers, as has hitherto been the case.

II. What are the human rights the protection of which justifies international intervention?

19. Our first task is to identify those human rights the enforcement of respect for which should be attempted on an international plane.

20. In our view those rights are the ones based on the imperative provisions of international law as defined by Professor Ago, who was a member of the International Court of Justice, in the following terms: "Those which are shared by the essential elements of the international community and not only, for example, by the States of the East or the West, by the developing countries or by the countries of a particular continent." 5/ Those standards have been defined in similar terms by Professor Macheret, rector of the University of Fribourg: "When one speaks of the community as a whole, one is in no way implying a requirement of unanimous recognition by every member of that community, thus giving each State an inconceivable right of veto; what is required is the recognition, not only by one or other group (even a majority group) of States, but by all the essential elements of the international community. In other words, the international community has the responsibility of imposing on all other States the standards to which it has given pre-eminence." 6/

21. Thus the task is not one of imposing a unilateral or subjective interpretation of human rights on each individual member State of the international community but one of endeavouring to ensure that all States respect the basic civil, political, economic, social and cultural human rights recognized as such by the essential components of the international community.

22. This basic rule of international human rights legislation is not respected, for example, by the European Community, which has taken the following position: "The Council wishes to point out that the development of Community cooperation with Cuba depends on the process of political and economic reform in that country" and: "Pending substantial changes in both President Castro's domestic and foreign policy and his regime, the European Community will reserve its position on contributing to Cuba's social and economic development." 7/

23. Thus the States of the then European Community, acting on the basis of the Council resolution of 28 November 1991 on human rights, democracy and development, and invoking its concern over the violation of human rights, is seeking to force another State, through the instrument of conditionality, to change its internal regime and its foreign policy, including its economic system - all of which are basic elements of the right to free self-determination as set forth in Article 1, paragraph 2, of the Charter of the United Nations.

24. In contrast, on 16 November 1992 the Council of the then European Community (now the European Union) approved a protocol concerning financial and technical cooperation between the EEC and the Kingdom of Morocco comprising a total of 438 million ECUs. That protocol does not contain any clause relating to the protection and promotion of human rights. Instead, paragraph 1 of its article 4 stipulates that aid to Mediterranean countries is conditional on the application of the structural adjustment policies decided on by the Bretton Woods institutions 8/ - in other words, violation of the economic, social and cultural rights of the peoples of those countries is stipulated as a condition.

25. The Association shall refrain from comment on the United States embargo against Cuba and the Torriceli Law. It shall also refrain from commenting on the draft bill prepared by Congressman Helms, since it does not deserve comment from the legal standpoint.

III. The concept of joint international responsibility in the violation of human rights

26. If one accepts the existence of an international responsibility or an international duty to take action to deal with a situation in which human rights are violated, we must also accept the position that such action must extend to the global context which gives rise to that situation in which human rights are not respected or are violated. In other words, the international community should also take into account the direct or indirect responsibility of other States or institutions in the commission of such violations.

27. The draft article 28 of the text on State responsibility, approved on first reading by the International Law Commission in 1980, refers to the responsibility of a State for an internationally wrongful act of another State and mentions the cases where a State is subject to the power of direction or control of another State or to coercion exerted on it by another State. 9/

28. The international community has already recognized to some extent this dual context - local and international - of violations of human rights; but it has done so in a unilateral fashion, taking into account, with manifest partiality, only the international aspect in some cases and only the domestic aspect in others.

29. For instance, as a consequence of the violations of human rights in Kuwait to which the Iraqi invasion gave rise, the Commission on Human Rights appointed a special rapporteur to investigate those violations; in other words, it took into account the exogenous factor. But it did not seek to investigate the violations of human rights committed in Kuwait before the Iraqi invasion and after the withdrawal of the Iraqi troops; notwithstanding the fact that the Special Rapporteur drew attention to such violations in his report, the Commission refrained from extending and broadening his mandate to enable him to investigate them.

30. Conversely, in the case of Cuba, the Commission on Human Rights appointed a rapporteur to investigate violations of human rights in the local context. But it was silent on the violation of the human rights of the Cuban people implicit in the embargo which the United States have been maintaining over the island for over 30 years, notwithstanding the fact that the same Rapporteur referred in his reports to the negative consequences of that embargo for the population of Cuba and the internal political tension factor deriving from that embargo.

31. A dual context - local and international - should be recognized in violations of human rights. That dual context is clearly visible in the field of economic, social and cultural rights; the violations of these rights committed in many countries comprise an exogenous element such as adjustment policies imposed from outside.

32. One may mention two cases in which the extranational factor in the violation of human rights is apparent: that of the laying of mines in the port of Corinto and the assistance given to the Contras in Nicaragua, which were condemned by the International Court of Justice; and that of the invasion of Panama, the civilian victims of which appealed to the Inter-American Court of Human Rights, which has declared the appeal admissible. 10/

33. To sum up on this point, the legitimacy of intervention by the international community to safeguard human rights should be based on a broad and objective approach, rather than a unilateral and subjective one, to human rights and that, where appropriate, the concept of joint responsibility should be introduced, that is to say, account should be taken of the contribution of exogenous causes, for example, in violations of economic, social and cultural rights, without, of course, evading the problem of international violations of human rights brought about through the instruments of armed aggression, the financing of mercenaries, etc.

IV. The problem of the bodies competent to verify the existence of violations of human rights

34. The other aspect of this problem area is that of determining which bodies should decide whether human rights are being violated or not and, if they are, determine what coercive measures (including conditionality) should be taken to restore the effectiveness of human rights.

35. During recent years the Security Council has been intervening to an increasing extent in the field of violations of human rights. It can be argued that this practice on the part of the Council goes beyond its sphere of competence, since its primary responsibility, as stated in Article 24, paragraph 1, of the Charter, is the maintenance of international peace and security. As a result, to legitimize its interventions in the field of human rights, the Security Council begins with a statement that the situation is a threat to international peace and security. 11/

36. But there are situations which, although their fundamental characteristics constitute a framework of serious violations of human rights, certainly constitute at the same time threats to international peace and security; examples are the Russian aggression in Chechnya and the occupation of part of Iraqi territory by the Turkish armed forces. In both cases, in which intervention by the Security Council would have rested fully on the terms of the Charter, the Council remained silent and took no action.

37. The delicate and complex task of deciding that the international community should intervene (and the level of that intervention) in cases of large-scale and systematic violations of basic human rights should be conducted with objectivity and impartiality, in a non-selective manner and within a framework of compliance with the Charter. In particular, in such situations a perfect balance must be struck in ensuring compliance with paragraphs 1 and 4, and the two parts of paragraph 7, of Article 2 of the Charter, concerning respectively the sovereign equality of all States, the prohibition of the threat or use of force by one State against another, the prohibition of intervention by the United Nations in matters which fall essentially within the domestic jurisdiction of States and, notwithstanding the last-mentioned provision, the possibility of applying the coercive measures provided for in Chapter VII of the Charter where appropriate.

38. The Security Council does not seem to be the body best suited to adopt decisions of this type.

39. In the first place, the presence of five permanent members with the right of veto is contrary to the basic principle set forth in Article 2, paragraph 1, namely that of the sovereign equality of all States.

40. In addition, the right of veto, or the principle of unanimity among the five permanent members, permits any one of them to block a Council decision even though that decision is supported by all the other members.

41. The permanent members of the Security Council, even where they are themselves involved in a situation which may give rise to the measures provided for in Chapter VII, maintain the right of veto, since under

Article 27, paragraph 3, of the Charter, they are required to abstain from voting only in cases covered by Chapter VI; hence the conclusion that in the situations covered by Chapter VII (threats to peace, breaches of the peace or acts of aggression) they can block action by the Security Council by means of the veto and thus enjoy total impunity. 12/ This could, for instance, happen today if the Security Council decided to take up the question of Russian intervention in Chechnya.

42. It may thus be inferred that the present structure and methods of operation of the Security Council, which grants such privileges to five Member States, cannot guarantee the application of the principles of universality, objectivity and non-selectivity in the examination of problems relating to human rights.

43. These features of the Security Council are the result of the Yalta agreements, which created a world divided into two camps. But that period of history came to an end with the disappearance of one of the permanent members of the Security Council. Consequently, the reference to the USSR which appears in Article 23 is obsolete, and paragraph 3, of Article 23, the concluding phrase of Article 108 and the concluding phrase of paragraph 2 of Article 109 of the Charter have ceased to be valid in factual terms and may be considered as having lapsed.

44. The General Assembly, by resolution 47/62 of 11 December 1992 entitled "Question of equitable representation on and increase in the membership of the Security Council" opened the debate on the amendment of Article 23 of the United Nations Charter.

45. The reasonable outcome of this process begun in the General Assembly should be an increase in the membership of the Security Council to bring it into due proportion with the present membership of the United Nations; an increase in the number of permanent members, bearing in mind the need for equitable regional representation, c. the abolition of the status of permanent member and a fortiori the abolition of the right of veto.

46. In the meantime the Security Council is in practice not only applying aspects of the Charter which are obsolete on both legal and political grounds but is in addition exceeding its powers; this is the case for instance with Iraq, where not only is it maintaining the embargo notwithstanding the devastating effects the latter is having on the civilian population, but in addition, by resolution 687 (1991), it has conferred on itself judicial and standard-setting functions inasmuch as it has condemned Iraq to pay reparations, fixing the amounts, the conditions for claiming reparation, etc., both directly and through the Governing Council of the United Nations Compensation Commission established by that resolution.

47. Another case in which the Security Council exceeded its powers - on that occasion infringing the autonomy of the International Court of Justice - was in relation to the Lockerbie terrorist attack; by resolution 748 (1992), it brought severe pressure to bear on the Court in the Libya v. United States case through the United States representatives. 13/ Regrettably, the majority of the members of the Court (the actual voting was 11 to 5) gave in to the pressures exercised by the United States and the Security Council. 14/

48. On a number of occasions measures decided on by the Security Council going beyond the scope of its powers, or involving delegation of its powers to one or more States, have been accompanied by serious violations of human rights, for example in Somalia and in the Gulf war. All the bodies of the United Nations, including the Security Council, should in all circumstances scrupulously respect the Charter, the Universal Declaration of Human Rights and the other international instruments, including the Geneva Conventions and the Protocols additional thereto concerning humanitarian law in wartime, since the United Nations, as the International Court of Justice has stated, 15/ is also a subject of international law and capable of possessing rights and duties on the international plane.

49. This means that human rights can be violated not only by a State, either within its own territory or in the territory of another State, as mentioned earlier, but also by international intergovernmental organizations, even during, or on the pretext of, humanitarian interventions.

V. The conditionalities imposed by the Bretton Woods institutions

50. Needless to say, both financial institutions as organized at present (weighted voting, blocking minority, total freedom from control either by the Economic and Social Council or the General Assembly, notwithstanding the fact that the two institutions are formally specialized agencies of the United Nations system) represent exclusively the particular interests of the great Powers which control them; those interests have little or nothing to do with the principles set forth in the Charter of the United Nations, the Universal Declaration and other international human rights instruments.

51. The condition imposed on debtor countries which urgently need to renegotiate their debts and maintain access to international financial markets is acceptance of the guiding principles relating to adjustment policies. These guiding principles include the opening of frontiers to transnational enterprises, reductions in real earnings, cutbacks in social expenditure (especially in the fields of health, education and social security), the privatization of State enterprises, etc. These guiding principles not only constitute gross interference in economic management of States but also have extremely harmful consequences on the living conditions of a substantial proportion of the population; in other words, they violate human rights, and especially economic, social and cultural rights.

52. The concern with "good governance" shown in recent years by the World Bank is directly related to the economic effects of government - the development of a market economy, a favourable climate for investment and the efficient use of resources; there is little concern with the actual existence of human rights. 16/

53. In May 1995 Michel Camdessus, the managing director of the International Monetary Fund, expressed the Fund's satisfaction regarding the situation in Mexico. He congratulated that country for having "... accepted a 10 per cent reduction in the purchasing power of employees [in actual fact the percentage was much higher] and allowed a million individuals to lose their jobs ..." [it appears that "only" half a million jobs have been lost so far] since the financial crisis of December 1994. 17/

General Arab Women Federation

[8 November 1995]
[Original: English]

1. The organization, which raised this issue with a group of other NGOs, at the last session of the Commission on Human Rights would like to point out the gravity of the measures adopted by some permanent members of the Security Council in the form of international sanctions aimed at depriving peoples from basic human rights as stated in paragraph 4 of the Commission resolution 1995/45.

2. The information available to the GAWF on the resolution concerns the United States sanctions against Cuba. The United States has also taken separate measures against Iraq since April 1990 and after the Gulf crisis in August 1990. The Security Council also adopted resolutions imposing sanctions on Iraq and allied countries launched a war on Iraq, although Iraq withdrew its troops from Kuwait and these sanctions are no longer justified but have been subject to political considerations turning the sanctions into measures violating basic human rights, especially of vulnerable groups, including women and children.

3. On this occasion the Federation would like to refer to the position paper issued by the United Nations Secretary-General on 5 January 1995, paragraphs 66-76, on international sanctions and the need to contain their effects on vulnerable groups. We would also like to draw attention to paragraph 147 (k) of the Platform for Action adopted by the Fourth World Conference on Women in Beijing, in September 1995, calling for limiting the negative effects of economic sanctions on women and children.

Notes

1/ Report of the International Law Commission on the work of its forty-fourth session, 4 May-24 July 1992, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10 (A/47/10), para. 246.

2/ International Court of Justice, Judgment of 9 April 1949, ICJ reports, pp. 34-35.

3/ International Court of Justice, Nicaragua v. United States of America, Merits, Judgment of 27 June 1986 (separate ICJ publication).

4/ See the following reports of the International Law Commission: forty-fourth session (A/47/10), 1992, op. cit., paras. 218 to 250; 1993, forty-fifth session (A/48/10), 1993, paras. 205 to 333; and forty-sixth session (A/49/10), 1994, paras. 260 to 314. See also the presentation by Professor Arangio Ruiz of his seventh report and the statements of other members of the Commission (in particular, Mr. Lukashuk and Mr. Tomuschat) in International Law Commission, forty-seventh session, provisional summary records of the 2391st meeting, 30 May 1995 (A/CN.4/SR.2391) and the 2392nd meeting, 31 May 1995 (A/CN.4/SR.2392).

5/ R. Ago, Droit des traités a la lumière de la Convention de Vienne, introduction.

6/ Augustin Macheret, Le noyau intangible des droits de l'homme: sources nationales et internationales, in Le noyau intangible des droits de l'homme, VII Interdisciplinary Colloquium on Human Rights at Fribourg University, Editions Universitaires, Fribourg, Switzerland, 1991, pp. 41-42.

7/ Official Journal of the European Communities, 25 June 1992, No. C 159/15.

8/ Ibid., 2 December 1992, No. L 352/13 and 14.

9/ International Law Commission, forty-fifth session, State responsibility. Articles 1 to 35 of Part One of the draft, approved on first reading by the International Law Commission at its thirty-second session (1980). ILC (XLV)/Conf. Room Doc. 1, 13 January 1993.

10/ OEA/SER.L/V II.84, Doc. 32. Inter-American Commission on Human Rights. Case 10573. 14 October 1993.

11/ See A/48/10, op. cit., paras. 302 and 303.

12/ See in this connection A/49/10 and A/48/10, op. cit., para. 307 in each.

13/ International Court of Justice: Affair concerning questions of interpretation and application of the 1971 Montreal Convention arising from the aero incident at Lockerbie; Order of 14 April 1992. See in particular the dissenting vote of Mohammed Bedjaoui.

14/ On the subject of "overstepping the limit" by the Security Council, see A/48/10, op. cit., paras. 302 and 303.

15/ International Court of Justice, Advisory Opinion of 11 April 1949, ICJ Reports 1949, p. 174.

16/ Wm. Randolph Smith, M. Roy Goldberg and Peter J. Lipperman, The World Bank's new focus on the quality of "governance" in borrowing countries and the linkage between "good governance" and internally recognized human rights, Washington, November 1992, pp. 31, 32 and 34.

17/ Bertrand La Grange, "La crise financière et economique a entraîné l'appauvrissement des mexicains", Le Monde, 5 July 1995, p. 3.